

FILED
IN CLERK'S OFFICE
U S DISTRICT COURT E D N Y

★ JUL 05 2012 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LONG ISLAND OFFICE

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

SYMBOL TECHNOLOGIES, INC., et al.,

Defendants.

Civ. A. No. 04-2276 (SJF)

FINAL CONSENT JUDGMENT AS TO DEFENDANT BRIAN BURKE

The Securities and Exchange Commission ("Commission") having filed a Complaint; Defendant Brian Burke ("Burke") having entered a general appearance and consented to the Court's jurisdiction over Burke and the subject matter of this action; and the Court having entered, with Burke's consent, a Partial Final Consent Judgment of Permanent Injunction and Other Relief as to Brian Burke ("Partial Consent Judgment"), which ordered, among other things, that (i) Burke be permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], and Sections 10(b), 13(a), 13(b)(2), 13(b)(5) of the Securities and Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2) and 78m(b)(5)] and Rules 10b-5, 12b-20, 13a-1, 13a-13, 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-13, 240.13b2-1 and 240.13b2-2]; (ii) pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Burke be prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of

the Exchange Act [15 U.S.C. 78o(d)]; and (iii) judgment on the Commission's requests for monetary relief be deferred to a later date:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that in view of Burke's forfeiture of \$1,907,156.38 in conjunction with his guilty plea in *U.S. v. Razmilovic et al.*, 04-CR-0519 (E.D.N.Y.) (LDW) ("*U.S. v. Razmilovic*"), in which he was criminally charged with engaging in the same conduct that is alleged in the Commission's Complaint, Burke is not additionally liable in the Commission's civil action for disgorgement of ill-gotten gains he received as a result of the conduct alleged in the Complaint.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that based on the sentence Burke received pursuant to his guilty plea in *U.S. v. Razmilovic* and his cooperation with criminal authorities therein and in this related Commission enforcement action, the Court is not ordering Burke to pay a civil penalty. If at any time following the entry of this Final Consent Judgment as to Brian Burke ("Final Consent Judgment") the Commission obtains information indicating that Burke knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Commission may, at its sole discretion and without prior notice to Burke, petition the Court for an order requiring Burke to pay a civil penalty. In connection with any such petition and at any hearing held on such a motion: (a) Burke will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Burke may not challenge the validity of this Final Consent Judgment, his consent hereto, dated ___, 2012 and filed herewith (the "Consent"), the Partial Consent Judgment, his consent thereto, dated February 14, 2005 and filed therewith, or any

related Undertakings; (c) the allegations of the Complaint, solely for the purposes of such motion, shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these circumstances, the parties may take discovery, including discovery from appropriate non-parties.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Burke shall comply with all of the undertakings and agreements set forth therein.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Consent Judgment.

V.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Consent Judgment forthwith and without further notice.

Dated: 7/5, 2012

s/ Sandra J. Feuerstein

UNITED STATES DISTRICT JUDGE